



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0688; FRL-9955-02-R6]

Air Plan Approval; Louisiana; Repeal of Excess Emissions Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), on November 20, 2016. The submittal is in response to the EPA's national SIP call on June 12, 2015, concerning excess emissions during periods of Startup, Shutdown, and Malfunction (SSM). EPA is approving the SIP submittal and finds that the SIP revision corrects certain deficiencies identified in the June 12, 2015, SIP call.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2016-0688. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO₂ Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270,

(214) 665-6691, Shar.alan@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our July 22, 2022 (87 FR 43760) proposal. In that document, we proposed to approve the removal of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC 33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) from the Louisiana SIP. We also proposed to determine that such SIP revision corrects substantial inadequacies identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination ended on August 22, 2022, and no adverse comments were received. We received a comment letter supporting the action and urging EPA to take action on a separate SIP submittal concerning LAC 33:III.2201(C)(8) of the Louisiana SIP.

We acknowledge the support for our proposal and note that while LAC 33:III.2201(C)(8) of the Louisiana SIP was not the subject of our July 22, 2022 (87 FR 43760) proposal, the EPA intends to fulfill its obligations under the terms of a consent decree for taking action on the Louisiana SIP submittal concerning LAC 33:III.2201(C)(8).¹

We also received numerous comment letters from the public as part of an effort organized by the Sierra Club that urged EPA to take action to close SSM “loopholes.”

¹ See Consent Decree resolving *Sierra Club et al. v. Regan* (Case No. 4:21-CV-6956-SBA, N.D. Calif.).

The commenters state that these SSM loopholes allow large amounts of pollution and that elimination of the loopholes will largely benefit Black, Latino, and Indigenous communities. These comments addressed SSM in general and did not include any specific comments on this rulemaking, which is focused on EPA's approval of the State's request to remove certain exemptions from the Louisiana SIP. With the removal of these provisions, sources in the State will no longer be able to use the repealed exemptions and will have greater incentives to control their air emissions.

EPA recognizes that certain communities are disproportionately impacted by environmental harms and risks. EPA is working to address disproportionate impacts in our programs to the greatest extent allowed by federal law. EPA is committed to our mission to protect human health and the environment by ensuring that federal laws protecting human health and the environment are administered and enforced fairly, effectively, and as Congress intended, including through EPA's oversight role in the implementation of the CAA. For example, the EPA has committed to address environmental justice concerns by conducting a Multi-Scale Monitoring Project. This project includes unannounced inspections, sampling, and air monitoring in priority areas. More about the Multi-Scale Monitoring Project can be found at <https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey>.

As no specific concerns were raised in public comment regarding this rulemaking action, we are finalizing our action as proposed.

III. Final Action

The EPA is approving a revision to the Louisiana SIP submitted by LDEQ on November 22, 2016, in response to EPA's national SIP call of June 12, 2015 concerning excess emissions during periods of SSM. More specifically, we are approving the removal of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC

33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) from the Louisiana SIP. We are approving these revisions in accordance with section 110 of the Act. The EPA is also determining that this SIP revision corrects deficiencies identified in the June 12, 2015 SIP call related to the above-referenced provisions.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”²

EPA provided additional analysis of environmental justice associated with this action for the purpose of providing information to the public in our July 22, 2022 (87 FR 43760) proposal. As discussed in the proposed action, we believe that this proposed action will be beneficial to all population groups within Louisiana and may reduce impacts. Exemptions for excess emissions during periods of SSM undermine the ability of the SIP to attain and maintain the NAAQS, to protect Prevention of Significant Deterioration increments, to improve visibility and to meet other CAA requirements. Such exemption provisions have the potential to lessen the incentive for development of

² <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

control strategies that are effective at reducing emissions during certain modes of sources' operations such as startups and shutdowns or to take prompt steps to rectify malfunctions. Removal of these exemption provisions from the Louisiana SIP will bring the treatment of excess emissions in the SIP into line with CAA requirements; thus, sources in the State will no longer be able to use the repealed exemptions and will have greater incentives to control their air emissions. We therefore determine that this rule will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC 33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) in 40 CFR 52.970, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for removal from the SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and the incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 26, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T – Louisiana

2. Amend §52.970 in the table in paragraph (c) titled “EPA Approved Louisiana Regulations in the Louisiana SIP” as follows:

a. Under “Chapter 11 – Control of Emissions From Smoke,” remove the entry for “Section 1107.A Exemptions”;

b. Under “Chapter 15 - Emission Standards for Sulfur Dioxide,” remove the entry for “Section 1507 Exceptions, Startup provisions, Online Operating Adjustments, and Bubble Concept”;

c. Under “Chapter 21 - Control of Emissions of Organic Compounds,” under “Subchapter M. Limiting Volatile Organic Compound Emissions from Industrial Wastewater,” revise the entry for “Section 2153.B., 2153.B.1.d. -d.ii., 2153.B.3.-4.b Control Requirements”;

d. Under “Chapter 23 - Control of Emissions from Specific Industries,” remove the entry for “Subchapter D. Emission Standards for the Nitric Acid Industry.”

The revision reads as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA Approved Regulations in Louisiana SIP
--

State citation	Title/subject	State approval date	EPA approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
*	*	*	*	*
Chapter 21 - Control of Emissions of Organic Compounds				
*	*	*	*	*
Subchapter M. Limiting Volatile Organic Compound Emissions from Industrial Wastewater				
*	*	*	*	*
Section 2153.B., 2153.B.1.d. - d.ii., 2153.B.3.-4.b	Control Requirements	5/20/1999, 10/20/2016	7/5/2011, 76 FR 38977, [Insert date of publication in the <i>Federal Register</i>] [Insert <i>Federal Register</i> citation].	Section 2153.B.1.i is no longer in SIP, [Insert date of publication in the <i>Federal Register</i>]
*	*	*	*	*
*	*	*	*	*

[FR Doc. 2022-21248 Filed: 10/4/2022 8:45 am; Publication Date: 10/5/2022]